UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,952	12/15/2003	Kim Nguyen Hargett	10954.10	3412

	7590	01/18/2007

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EXAMINER
MOFIZ, APU M

ART UNIT	PAPER NUMBER
2161	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	**Applicant(s)**
Office Action Summary	10/735,952	HARGETT ET AL.
	Examiner	**Art Unit**	
	Apu M. Mofiz	2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _06 November 2006_.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-10_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-10_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _15 December 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Examiner's Response to Applicant's Remarks

1.   Applicant's arguments submitted on 11/06/2006 with respect to claims 1-10 have

been reconsidered but are not deemed persuasive for the reasons set forth below.

        Examiner's Responses to Applicant's Remarks are listed below:

2.   Applicant argues (under REMARKS section) that, NCR E-business Teradata

@ctive Warehouse 2.0 Installation and Customization Guide does not teach "a plurality

of predefined subject areas, or the selection of shared subject areas from the plurality of

predefined subject areas for inclusion in a logical data model utilized in the construction

of a data warehouse system."

        Examiner respectfully disagrees. As a matter of fact the prior art of NCR

(hereinafter referred to as NCR) is all about customized logical data model, which

includes predefined subject areas.

        NCR teaches, "EBTAW 2.0 is not intended to be a pre-packaged complete solution;

rather, it offers an implementation methodology that Professional services can use to gain a

better understanding of the tasks required when implementing a Teradata warehouse for an e-

business company. (1-2) ... EBTAW Logical Data Model: This model is delivered in an Erwin

file which can be used to generate a physical implementation of the database as well as to

customize the LDM to meet customer requirements. The model is designed to store the type

of information that is necessary for managers to measure the performance of their internet

business and web marketing channels, with a particular emphasis on tracking customer web

interactions, advertising and demographics. ... A set of ETL scripts, are provided to load the

EBTAW Teradata database tables from the staging tables. It can be as is by Professional Services

or **modified to match a customized LDM**. (1-3) ... If necessary, modify the EBTAW ETL

modules to reflect changes in the staging tables and/or LDM physical database. The ETL module

copies, transforms, and loads data from the staging tables to the LDM. (1-4) ... FIG. 1-1 (1-6) ...

The **EBTAW Logical Data Model (LDM)** is a generic model that can be used as a working

template for NCR's Professional Services **when implementing a data warehouse at a**

customer site. The LDM will need to be modified for each customer engagement based on

initial business discovery. The LDM includes entities to model a business's customers, web sites,

web site interactions, products, transactions and supporting data. (2-2) ... The EBTAW **LDM is**

a large data model, composed of a large number of tables. To effectively view and understand

the data model, the data tables have been **logically organized into smaller groups called**

subject areas. Each subject area is comprised of a set of tables that contain information

relevant to a particular entity. In addition, **the subject areas address particular business**

questions. There are also a variety of subject areas relating to customer sessions that involve

browsing, purchasing or interacting with employees. **All subject area information need not be**

present for the model to be useful. For most types of businesses, all of the subject areas in

the model will not apply. (2-4; 2-5) The preceding text excerpts clearly indicate that for

individual customer(s)/business need(s), data warehouse(s) is/are created/populated

using customized logical data model, i.e., some portions of the logical model are used to

match the customer(s)/business(s) need. The logical data model is organized into

predefined subject areas (e.g., Advertisement, Address (i.e., location), and Party etc.

etc. See 2-4, 2-8 and so on). In accordance with these subject areas, data is loaded into the data warehouse. Therefore, it is very clear that the Applicant argument is completely wrong.

3.   The Applicant made some obvious changes to the claim that merely changes the language, but still has the same scope as the old claims. **Therefore the double patenting rejection still stands.**

4.   Additionally, Erwin tool is widely used to create entities and entity relationship diagrams that are the logical data model to create a relational database. The entities, which have corresponding attributes that always have data that is needed by the user/business/customer of the database. An irrelevant database is useless if it is not needed for (a) particular business(s). Therefore just claiming some data that is relevant to a particular business is not a patentable subject. The process/method of using logical data model (i.e., entities and entity relationship diagrams) that accommodates a particular customer's data to create a relational database/data warehouse is exactly the same as any relational database. Therefore, the Applicant is merely claiming some industry specific data that needs to be stored in a relational database. The data itself is not a patentable subject matter and considered mere descriptive data. Any database can be used to achieve the goal of storing the claimed data.

All other arguments are addressed in the above section.

Double Patenting

5.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6.   Claims 1-10 are provisionally rejected under the judicially created doctrine of

obviousness-type double patenting as being unpatentable over claims 1-11 of

copending Application No. 09/838,101, claims 1-32 of copending Application No.

09/921,566, claims 1-14 of copending Application No. 09/990,539, claims 1-13 of

copending Application No. 10/017,146, claims 1-8 of copending Application No.

10/027,967, claims 1-19 of copending Application No. 10/190,099. Although the

conflicting claims are not identical, they are not patentably distinct from each other

because claims 1-11 of copending Application No. 09/838,101, claims 1-32 of

copending Application No. 09/921,566, claims 1-14 of copending Application No.

09/990,539, claims 1-13 of copending Application No. 10/017,146, claims 1-8 of

copending Application No. 10/027,967, claims 1-19 of copending Application No.

10/190,099 contain every element of claims 1-10 of the instant specification.

"A later patent claim is not patentably distinct from an earlier patent claim if the

later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at

896, 225 USPQ at 651."

This is a <u>provisional</u> obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by

"NCR E-business Teradata @ctive Warehouse 2.0 Installation and Customization

Guide", 06/2000, See particularly chapter 2. The limitations taught by the reference

constitute a public use or on-sale bar.

9.   Additionally any database management texts book e.g., (Database System

Concepts by Silverschatz et al., 1998, Chapters 1- 2), which teaches entity-relationship

diagram (i.e., logical data model and each entity can have many attributes) and uses

these model to develop a database reads on this claimed subject matter. **A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.** Applicant simply uses the intended use of any database texts book, which teaches entity-relationship diagram (i.e., logical data model according to the Applicant) and uses these model to develop a database. Whether the entity is about advertisement, or just to keep data about web visitors, shopping data etc. is irrelevant. Because various individual/industry/corporation would keep various types of data in databases and would develop various different entities wherein the entities have various attributes and have interrelationship between entities and from the Entity Relationship Diagram develop various databases, which enable them to easily retrieve data from the various database/data warehouse. All entities have attributes. A particular industry in its entities would have attributes (i.e., extensions according to the Applicant) entities that are specific to its industry. That is the whole idea about a database or a data warehouse. Storing irrelevant data in a database/ data warehouse would not have any use to that organization. The particular types of data are purely functional/non-functional descriptive data and therefore considered non statutory.

Conclusion

10.   **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Points of Contact

11.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Apu M. Mofiz whose telephone number is (571) 272-

4080. The examiner can normally be reached on Monday – Thursday 8:00 A.M. to 4:30

P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jeffrey Gaffin can be reached at (571) 272-4146. The fax numbers for the

group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should

be directed to the Group receptionist whose telephone number is (703) 305-9600.

Apu M. Mofiz
Primary Patent Examiner
Technology Center 2100

January 10,2007